

Michigan Department of Civil Service

REGULATION

Appointing Authority Letter Reference: CS-6930 <u>CS-6938</u>	Effective Date: October 29, 2000 <u>March 18, 2001</u>	Index Reference: Disbursements for Personal Services	Regulation Number: 7.01
Issuing Bureau: Personal Services Review	Rule Reference: Rule 7-1 (Disbursements for Personal Services)		Replaces: <u>Reg. 7.01</u> <u>(CS-6930, October 29, 2000)</u> Reg. 4.14 (CS-6837, June 2, 1997)
Subject: DISBURSEMENTS FOR PERSONAL SERVICES			

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100. AUTHORITY AND PURPOSE

101. Authority. This regulation is issued by the state personnel director under authority granted in article 11, section 5, of the Michigan constitution and applicable civil service commission rules.

102. Purpose. Civil service **rule 7-1** establishes the basic standards and procedures for an appointing authority to request approval from the department of civil service to make disbursements for personal services performed by persons outside the classified work force. This regulation establishes supplementary standards, guidelines, and procedures approved by the state personnel director to implement rule 7-1.

103. Guidelines. The guidelines in this regulation have been issued by the state personnel director to provide authoritative, useful, and consistent guidance to the department of civil service, appointing authorities, and others in implementing rule 7-1. A guideline may be relied upon for guidance if it applies to the facts of a particular request.

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200. REQUIREMENTS AND DEFINITIONS

201. Definitions

Civil Service Rule 9-1

9-1 Definitions — Unless the context clearly provides otherwise, the following terms in the civil service rules and regulations are defined as follows:

9-1.26 Contract for personal services means a contract between a state agency and a contractor pursuant to which the state agency is obligated to make disbursements from appropriated funds for the personal services of a person who is not a classified employee of the state.

9-1.27 Contractor means an independent contractor or special personal services employee who enters into a contract for personal services.

9-1.54 Independent contractor means an individual contractor or an employee of a contractor who provides personal services and who is not an employee of the state of Michigan.

9-1.55 Interested party, in a review of a technical disbursement decision, means a party that ~~files~~ filed a request or a written appearance in the initial civil service staff review of ~~a~~ the request.

9-1.70 Mixed contract means a contract that authorizes disbursements both for personal services and for things that are not personal services.

9-1.76 Party, in a review of a technical disbursement decision, means any of the following ~~persons or organizations~~:

- (a) ~~An~~ The appointing authority that files a request to contract for personal services.
- (b) An exclusive representative of a classified employee with a direct interest in the technical disbursement decision.
- (c) A nonexclusively represented classfied employee with a direct interest in the technical disbursement decision.
- (d) A limited recognition organization appearing on behalf of a classified employee with a direct interest in the technical disbursement decision.
- (e) The office of the state employer.
- (f) Any other person or organization ~~(1)~~ with a demonstrable special interest in ~~a~~ the technical disbursement decision, ~~(2)~~ who (1) petitions to participate in the civil service staff review, and ~~(3)~~ who is authorized by the department of civil service to participate in the review.

9-1.80 Personal services means work performed for the direct benefit of the state by an individual for compensation.

9-1.100 Request means a request submitted by an appointing authority to the department of civil service under rule 7-5, for approval to acquire personal services from a person who is not a classified state employee, or under rule 7-7, to add personal services to the preauthorized list.

9-1.105 Special personal services employee means a contractor who is an employee of a state agency and who is not a classified employee, an exempt employee, or an excepted employee.

201-1: Additional Definition as Used in This Regulation:

1. **Combined request** means a request by an appointing authority that combines two or more distinct personal services in a single request.

202. Rules.

Civil Service Rule 7-1

7-1 Disbursements for Personal Services

7-1.1 Requirements - An appointing authority shall not make or authorize disbursements under a contract for personal services until the provisions of article 11, section 5, of the constitution, these rules, and regulations issued by the state personnel director have been complied with in every particular.

7-1.2 Disapproval by state personnel director - If an appointing authority makes or authorizes disbursements for personal services in violation of article 11, section 5, of the constitution or an applicable civil service rule or regulation, the state personnel director may disapprove any further disbursements by written order. If an appointing authority fails or refuses to comply with an order of the director, the director is authorized to take all appropriate action, including filing a civil action, to compel compliance with the disapproval order.

203. - Jurisdiction.

203-1: Court Orders. Rule 7-1 does not apply to disbursements for personal services outside the classified work force if those disbursements are made pursuant to a court order requiring personal services and the court retains jurisdiction of the matter or the matter is subject to further court review.

203-2: Grants. A grant is a congressional or legislative appropriation that is passed through a state agency to a recipient without a contract for personal services. Typically, a grant is disbursed as required by the legislation without following any purchasing or contracting procedures. Alternatively, a grant is

often for the direct benefit of the recipient (e.g., training grants) rather than the state. Therefore, an appointing authority does not need to obtain civil service approval to disburse grant funds. This is so even if the recipient of the grant provides or purchases personal services with the grant. In particular, no civil service approval is required to make a grant of funds to any of the following:

1. Another unit of government.
2. A nonprofit community agency or corporation created under local, state, or federal law.
3. A nonprofit charitable agency or corporation.
4. An individual grant recipient.

203-3: Contracts with Other Governmental Entities. Article 3, §5, of the Michigan constitution permits the state to enter into agreements with other units of government and governmental authorities to perform, finance or execute state functions. The constitution empowers the legislature, not civil service, to impose restrictions, limitations, or conditions on these intergovernmental agreements. As a result, contracts between the state and other units of government do not require civil service oversight or approval. An appointing authority does not need civil service approval to contract for personal services from other governmental entities, including, but not limited to, the following:

1. A state of the United States.
 2. The federal government.
 3. The Dominion of Canada.
 4. A political subdivision of the State of Michigan.
 5. A governmental authority.
 6. A state university, a state college, or a community college, or other public school.
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300. STANDARDS FOR CONTRACTING FOR PERSONAL SERVICES

301. Rules.

Civil Service Rule 7-2

Rule 7-2 Standards for Contracting for Personal Services

Rule 7-2.1 Requirements — An appointing authority may make or authorize disbursements for personal services under a contract for personal services only if the personal services meet one or more of the following standards:

- (a) **Standard A.** The personal services are so temporary, intermittent, or irregular in nature that they cannot be provided efficiently through the classified service.
- (b) **Standard B.** The personal services are uncommon to the state classified service because they are so specialized, technical, peculiar, or unique in character that the talent, experience, or expertise required to accomplish the duties and responsibilities cannot be recognized as normal to the state service and cannot be efficiently included in the classification plan.
- (c) **Standard C.** The personal services involve (1) the use of equipment, materials, or facilities not reasonably available to the agency at the time and place required and (2) the estimated cost to the agency in procuring such equipment or materials and establishing the needed positions would be disproportionate to the contract cost.
- (d) **Standard D.** The personal services would be obtained at substantial savings over the life of the contract when compared with having the same personal services performed by the classified work force. The personal services do not meet this standard if, despite the savings over the life of the contract, substantial savings would not likely be realized over the long term. Savings are "substantial" if the contract for personal services results in average annual savings equal to or greater than the minimum required savings computed using the table below:

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<u>Col. 1</u> Average Annual Contract Cost:		<u>Col. 2</u> Minimum Required Average Annual Savings Must Equal:
<u>From:</u>	<u>To:</u>	
\$1	\$25,000	25% of avg. annual cost.
\$25,001	50,000	20% (minimum \$6,250)
50,001	100,000	15% (minimum \$10,000)
100,001	200,000	12.5% (minimum \$15,000)
200,001	500,000	10% (minimum \$25,000)
500,001	1,000,000	Minimum \$50,000
1,000,001	and above	5% of avg. annual cost

(e) **Standard E.** The personal services are included in a mixed contract that meets each of the following tests:

- (1) The mixed contract is predominantly for things other than the performance of personal services.
- (2) The personal services included are logically or practically related to the predominant nature of the contract.

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302. Table of Permissible Uses of Procedures. This table summarizes the permissible uses of each of the three procedures available for approving contracts for personal services.

To find if an appointing authority can use a particular procedure to approve a particular type of contract, go to the cell at the intersection of the procedure (major column), type of contractor (minor column), and standard (row). If the cell contains “OK,” the particular procedure may be used to obtain approval. If the cell contains “N/A,” the procedure is not available for use.

	Prior Approval Procedure Rule 7-5		Decentralized Procedure* Rule 7-6		Preauthorized Procedure Rule 7-7	
Standards Under Rule 7-2.1	Hire an SPS Employee	Hire an Independent Contractor	Hire an SPS Employee	Hire an Independent Contractor	Hire an SPS Employee	Hire an Independent Contractor
Standard A (Temporary Services)	OK	OK	N/A	OK [*]	OK	OK
Standard B (Unique Services)	OK	OK	N/A	OK [*]	OK	OK
Standard C (Lack of Equipment)	N/A	OK	N/A	OK [*]	N/A	OK
Standard D (Cost Savings)	N/A	OK	N/A	OK [*]	N/A	OK
Standard E (Incl. in Mixed Contract)	N/A	OK	N/A	OK [*]	N/A	OK

* Note: Under rule 7-6.6, the decentralized procedure may NOT be used in any of the following circumstances:

1. If any classified employee will be *laid off* or *demoted* as a result of the contract.
2. If the contract *cost exceeds* \$500,000 (in any one fiscal year) or \$2,000,000 (over the life of the contract).
3. If the appointing authority has or will enter into *six or more similar contracts* in one fiscal year.

If any of these circumstances apply, the appointing authority **MUST** use the prior approval procedure (rule 7-5) or the preauthorized procedure (rule 7-7).

303. Guidelines for Standard A.

Guideline A-1: Examples (Standard A). Temporary, intermittent, or irregular personal services include, for example:

1. Personal services that are needed so sporadically or randomly that the need for such personal services cannot be reliably predicted.
2. Personal services for which a classified work force is not available, as evidenced by a lack of certifiable candidates.
3. Services for which the need is so limited that it is not efficient or practical to maintain employment lists or otherwise use the classified service.

Guideline A-2: Sunset within 36 Months (Standard A). Temporary full-time personal services may be approved under these standards if funding or the need for the personal services will not continue beyond 36 months. For purposes of this analysis, the appointing authority must provide particularized proof that the specific funding, or the need for the personal services to be provided, are limited to no more than 36 months. For example, a specific program with a sunset provision within 36 months may meet this standard. Approval under this guideline is limited to services that are intended to be limited duration, temporary personal services that meet a particularized, limited-duration need. This guideline does not authorize approval of (1) renewal of a request previously approved under this guideline, (2) a request based on general uncertainty about future funding, or (3) a request for personal services which are likely to be provided indefinitely even though the funding is limited to less than 36 months.

304. Guidelines for Standard B.

Guideline B-1: Examples of Uncommon Personal Services (Standard B). The following are typical categories of personal services approved under these standards:

1. Personal services for which it is extremely difficult to recruit candidates willing to accept a classified position.
2. Personal services that require expertise outside the normal scope of the classified service.
3. Personal services that are specialized or rare.

4. Personal services that reasonably require the provider to be outside the classified work force, such as expert testimony, independent audit services, and dispute-resolution and arbitration services.

Guideline B-2: Personal Services Not Classified (Standard B). These standards include personal services not typically provided by the classified service and recognizes that the classified service cannot reasonably and efficiently include all possible personal services in its classification scheme. The absence of the personal services from the classification scheme may provide some justification for a request under these standards.

305. Guidelines for Standard C.

Guideline C-1: Costs (Standard C). An analysis of “cost” under Standard C includes, but is not necessarily limited to, simple dollar cost comparisons. An analysis under this standard may consider such qualitative factors as (1) the time and effort required to create and manage needed classified positions, (2) the impact of the new personal services on the agency mission, and (3) the likelihood of the personal services continuing into the future, or the like.

306. Guidelines for Standard D.

Guideline D-1: Computing and Comparing Costs (Standard D). Savings are computed by comparing (1) the actual or estimated cost to contract with an independent contractor to deliver the personal services with (2) the actual or estimated cost of having the same personal services provided by the classified work force. Savings are “substantial” if the contract for personal services results in *average annual savings* equal to or greater than the savings computed using the STANDARD D MINIMUM COST SAVINGS TABLE in rule 7-2.1(d).

To determine if the estimated cost savings meet the “substantial savings” test, follow these steps:

Step 1. Estimated Contract Cost. Compute the estimated average annual cost of the contractual personal services requested.

Step 2. Estimated Cost of Classified Work Force. Compute the estimated average annual cost of providing the same type and level of personal services using the classified work force.

Step 3. Average Annual Savings. Subtract the figure computed in **Step 2** from the figure computed in **Step 1**.

Step 4. Using the figure computed in **Step 1**, locate the appropriate row in column 1 of the table.

Step 5. Minimum Required Savings. Using the figures in the corresponding row in column 2 of the table, compute the *minimum* dollar savings required for approval of the proposed contract.

- A. If there is a percentage stated, multiply the average annual cost (from **Step 1**) by the percentage.
- B. If a minimum amount is also included in the table, use the *larger* of (1) the amount computed in **Step 5(A)** or (2) the stated minimum amount.
- C. If only a minimum amount is stated in column 2, use that figure only (no percentage computation is required).

Step 6. Comparison. Compare the result from **Step 3** (estimated average annual savings) with the result from **Step 5** (minimum required savings). If the result from **Step 3** is *less than* the result from **Step 5**, the proposed savings are **not** substantial.

Guideline D-2: Long Term Savings (Standard D). Approval of a request shall be denied if it appears that the savings predicted over the term of the contract are unlikely to be realized when evaluated over a longer term. Particular attention may be directed at (1) requests where there may be insufficient vendors in the future to ensure adequate price competition or (2) where a low bid in the initial years may result in economic losses which the bidder will seek to recover by significantly higher prices in later bid years.

Guideline D-3: Wage and Benefit Standards (Standard D). ~~The department of civil service shall annually publish standard wage rates, average benefit costs, and indirect and other overhead costs for classified employees that appointing authorities may rely upon when estimating the cost of providing services with classified employees. The state personnel director shall periodically publish standardized rates that establish minimum thresholds to be applied in the preparation of a Standard D cost analysis. The information may include, but is not limited to, salary and wages, fringe benefits, group insurance, inflation, indirect costs, unemployment insurance, workers' compensation insurance, retirement fringe benefits, FICA costs, contract monitoring costs, and the like. The state personnel director may also develop and publish standardized formulas and other electronic processes to assist in identifying and documenting costs associated with contracting for personal services in comparison to costs of utilizing the classified service.~~

Guideline D-4: Federal Funds. Rule 7-1 applies to disbursements by the state of all funds appropriated by the Michigan legislature, irrespective of whether the original taxing authority that raised the funds was the federal or state government. However, rule 7-1 does not apply to disbursements if they are made from nonstate funds pursuant to a specific federal mandate that *requires* the state to obtain personal services outside the classified service. Under such a circumstance, the appointing authority need not obtain civil service approval before contracting for services. However, if the state has *discretion* to determine who will provide the personal services, the appointing authority must obtain civil service approval.

307. Guidelines for Standard E.

Guideline E-1: Mixed Contracts (Standard E).

- A. Mixed Contracts.** Many contracts are mixed contracts that include disbursements for both “personal services” and for things that are not personal services. In Standard E, the commission has authorized agencies to make disbursements for personal services when they are included in a mixed contract that is predominantly for things *other than* the acquisition of personal services. For example, if a mixed contract is predominantly for the purchase of real estate, the various ancillary personal services performed on behalf of the state (such as appraisal services, survey services, and the like) may be purchased from outside the classified service as part of the contract.
- B. Predominant Nature.** Personal services may be contracted for under Standard E only if they are included in a contract that is predominantly for things other than acquiring the personal services. Any reasonably objective method of evaluating the predominant nature of a mixed contract may be used. For example, the predominant nature of a mixed contract can be determined by comparing the costs of the various components of the contract. If the cost of things other than personal services exceeds the cost of the personal services, the contract would be predominantly for things other than personal services.
- C. Business Relationship Test.** If the contract is predominantly for things other than personal services, the appointing authority must also review the relationship of the personal services to the contract. If the proposed personal services have a logical or practical business relationship to the predominant nature of the contract, the personal services may be acquired under Standard E. If the personal services do not have a logical or practical business relationship to the predominant nature of the

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contract, the appointing authority must seek separate approval for the personal services under another standard in rule 7-2.1. An appointing authority may not include in a mixed [contract](#) those contract personal services that have no logical or practical business relationship to the contract's predominant nature.

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400. Disbursements to Special Personal Services (SPS) Employees

401. Rules.

Civil Service Rule 7-3

Rule 7-3 Disbursements to Special Personal Service Employees.

An appointing authority may make disbursements for personal services to a special personal services employee under the following conditions:

- (a) **Standards.** The personal services meet either Standard A or Standard B in rule 7-2.*
- (b) **Procedures.** The disbursements for personal services have been (1) approved under the request procedures in rule 7-5 or (2) preauthorized under rule 7-7.*

402. Required Procedures for Hiring SPS Employees. An agency shall not hire or make disbursements for personal services to a special personal services (SPS) employee unless the department of civil service has approved the disbursements *in advance*. This means that an agency must either file a request under rule 7-3 or have already obtained preauthorized approval under rule 7-7. An agency may not hire an SPS employee using the decentralized approval process in rule 7-6.

403. Standards for Hiring SPS Employees. An SPS employee may only be hired if the personal services meet either Standard A or Standard B in rule 7-2. An agency may not hire an SPS employee under Standard C, Standard D, or Standard E.

Guideline 403-1: Cost Savings and SPS Employees. Cost savings may be considered in evaluating “efficiency” under both Standard A and Standard B. However, the cost savings tests under Standard C and Standard D are not applicable to SPS employees. Therefore, civil service will not approve the hiring of an SPS employee *solely* on the basis that it is less expensive to hire an SPS employee than a classified employee.

Guideline 403-2: Hiring Freeze and SPS Employees. The governor and appointing authorities occasionally impose hiring freezes, budget limitations, head count limitations, and other restrictions on hiring classified employees as mechanisms to control costs. Since cost savings alone are insufficient justification for hiring SPS employees, civil service will not approve the hiring of

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an SPS employee *solely* for the reason that there is a hiring freeze, budget limitation, head count limitation, or other management-imposed limitation on hiring classified employees. In such cases, independent contractors may be used if the contract meets one or more of the standards in rule 7-2.

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500. Disbursements to Independent Contractors

501. Rules.

Civil Service Rule 7-4

7-4 Disbursements to Independent Contractors — An appointing authority may make disbursements for personal services to an independent contractor under the following conditions:

- (a) **Standards.** The personal services meet one or more of the standards in rule 7-2.
- (b) **Procedures.** The disbursements for personal services have been (1) approved under the request procedures in 7-5, (2) authorized under the decentralized review and approval procedures in rule 7-6, or (3) preauthorized under rule 7-7.

502. Standards for Hiring Independent Contractors. A contract for personal services with an independent contractor may be approved under any one or more of the five standards in rule 7-2.

503. Procedures for Hiring Independent Contractors. An agency shall not make disbursements for personal services to an independent contractor unless the disbursements have been approved under rule 7-1. This means that an agency must (1) file a request under rule 7-5, (2) file a certification under the decentralized procedure in rule 7-6, or (3) have already obtained preauthorized approval under rule 7-7.

600. Prior Approval Procedure

601. Rules.

Civil Service Rule 7-5

7-5 Procedure: Prior Written Approval by Civil Service Staff

7-5.1 Procedure — An appointing authority may submit a request for approval to the department of civil service. Civil service staff shall (1) receive and evaluate the request, (2) receive and evaluate information submitted by other interested parties, and (3) issue a written technical decision. The staff shall approve the request, with or without conditions, or deny the request.

7-5.2 Effective date of staff decision

(a) **One interested party.** If the appointing authority is the only interested party participating in the staff review, the technical decision is effective upon its issuance, unless a later date is specified in the technical decision.

(b) **Two or more interested parties.** If more than one interested party participates in the staff review, the technical decision is effective 14 calendar days after the date the technical decision is issued, unless a different date is specified in the technical decision. An interested party intending to appeal the technical decision may file a request that the state personnel director stay the effective date of the decision pending appeal. The director may stay the effective date of the technical decision pending a technical appeal if the director determines that (1) it is unlikely that the request meets one or more of the standards for approval and (2) a stay is in the best interest of the classified service.

7-5.3 Appeal of technical decision. An interested party who participated at the staff review may file a technical appeal as provided in rule 8-3. The appeal must be received by the department of civil service and all other interested parties within 14 calendar days after the date the technical decision is mailed.

602. Submission of Request by Appointing Authority. Unless otherwise authorized, an appointing authority shall submit a request to the department of civil service and receive approval before it authorizes or makes a disbursement for personal services. The request shall include the following:

- (a) A completed form CS-138, including the proposed beginning and ending dates of the contract for personal services and all appropriate attachments.
- (b) A complete description of the personal services to be performed.

- (c) An analysis that identifies the standard(s) in rule 7-2 upon which the appointing authority relies and a justification that details the relationship between the personal services and the standard(s).
- (d) Certification that each appropriate labor organization has been notified if required by a collective bargaining agreement. If a labor organization is required to be notified by a collective bargaining agreement or otherwise, the notice must be accompanied by a copy of the CS-138 and all supporting documentation submitted to the department of civil service. The requesting appointing authority shall certify that it has given written notice to the appropriate labor organization in accordance with provisions contained in the collective bargaining agreement and shall retain a copy of the signed transmittal.
- ~~(e)~~ (e)—The numbers and classifications of state classified employees who will or may be terminated, laid off, demoted, or bumped as a result of the implementation of the contract for personal services.
- (f) Certification that notification has been provided to nonexclusively represented employees whose positions will be abolished as a result of the contract for personal services.
- ~~(fg)~~ If the appointing authority seeks approval under Standard C, it shall include in its submission documentation regarding the unavailability of the facilities, equipment, or materials, the estimated costs to the agency to procure the facilities, equipment, or materials, and the costs of establishing the needed positions.
- (h) If the appointing authority seeks approval under Standard D, it shall include in its submission documentation regarding the following:
 - (1) Detail on the types of personal services to be performed, the location of performance, and the frequency and quantity of personal services needed. If available, the RFQ with the work statement for the independent contractor ordinarily will contain this information.
 - (2) The number and civil service classifications of persons the appointing authority would require if it were to deliver the same services using a classified work force.
 - (3) The estimated cost of providing the same services with the classified work force, including pay, fringe benefits, overhead, and indirect costs.

603. Standard for Review. Civil service staff shall review all requests to disburse funds for personal services in accordance with the standards in civil service rule 7-2. The civil service staff shall approve the request if it determines that the request meets one or more of the standards in rule 7-2.

604. Civil Service Staff Review Procedure. The department of civil service shall:

- (a) Record receipt of the request and all appearances filed by interested parties. A written appearance by an interested party must be filed with civil service and the appointing authority within 7 calendar days after the date the request is filed with civil service.
- (b) Review the request for sufficiency of documentation and request any necessary additional information from the appointing authority within 7 calendar days of the receipt of the request.
- (c) Review all timely and pertinent information presented by the appointing authority and other interested parties.
- (d) Conduct interviews or conferences necessary to adequately evaluate and act upon the request.
- (e) Approve or disapprove the request within 14 calendar days after receipt of all information necessary to complete the review, unless additional time is required to make a final decision.
- (f) If the request is approved, attach any written conditions or limitations on the approval to ensure compliance by the appointing authority.
- (hg) Provide written notice of the staff decision to the appointing authority and to all other interested parties.

605. Evaluating a Combined Request. If an appointing authority files a combined request that includes two or more distinct services, the department shall evaluate the combined request pursuant to the procedure in this section.

- (a) Civil service staff shall issue a single decision approving or denying a combined request unless the staff determines that one or more of the services in the combined request has been included for a sham or improper reason or for the purpose of avoiding a separate review.

- (b) If it is claimed that one or more services have been combined in a single request for an improper purpose, the appointing authority shall demonstrate that the individual services in the combined request (1) have been combined for valid business reasons or (2) have some practical and reasonable nexus that warrants considering the services together in a combined request.
- (c) If the civil service staff determines that one or more services have been improperly combined in a single request, the staff shall treat those services as a separate and distinct request and shall issue a separate decision as to those services.
- (d) When the civil service staff considers multiple services in a combined request, the combined request shall be approved if the staff determines either of the following:
 - (1) One of the dominant or critical services in the combined request meets one or more of the standards in rule 7-2.
 - (2) The combined services, evaluated as a whole, meet one or more of the standards in rule 7-2.

606. Appeal of Staff Decision. An interested party who is aggrieved by the staff decision may file a technical appeal under the provisions of rule 8-3. The technical appeal must be received by the department of civil service within 14 calendar days after the date the technical decision was issued. The technical complainant must also simultaneously file a copy of the technical appeal with all interested parties and must file a proof of such service with the department of civil service.

700. Decentralized Procedure

701. Rules.

Civil Service Rule 7-6

7-6 Procedure: Decentralized Approval without Prior Civil Service Review

7-6.1 Document Compliance — An appointing authority may make or authorize disbursements for personal services if the appointing authority documents its compliance with civil service rules and regulations prior to making any disbursements and the appointing authority gives notice of the contract or disbursements to the department of civil service, to employees, and to exclusive representatives of employees.

7-6.2 Training required An appointing authority shall not use the decentralized approval procedure until the department of civil service certifies in writing that the staff of the appointing authority has received adequate training in the required procedures. The department may also require additional periodic training at any later date to ensure continued compliance with the civil service rules and regulations as a condition of the use of the decentralized approval procedure.

7-6.3 Documentation required The appointing authority shall document each of the following prior to making any disbursements:

- (a) The standard or standards in rule 7-2 that the personal services meet.
- (b) Details of the proposed contract that are sufficient to demonstrate clearly how the personal services meet one or more of the standards in rule 7-2.
- (c) Any further documentation required in the regulations.
- (d) A copy of each contract executed or effective as a result of this approval.

7-6.4 Maintenance of records The appointing authority shall maintain the documents required by this rule for a period not less than 2 years after the end of the contract. The documents must be made available to the department of civil service for purposes of auditing compliance.

7-6.5 Notice As a condition of the use of the decentralized approval procedure, the appointing authority shall complete a form prescribed by the department of civil service and send a copy of the completed form to the department of civil service at least 14 calendar days before the contract is executed. At the same time, the appointing authority shall also post notice of the proposed contract in a central public location.

7-6.6 Limitations Notwithstanding any other rule or regulation to the contrary, an appointing authority shall file a request and obtain prior civil service approval as required in rule 7-5 before making or authorizing disbursements for personal services in any of the following circumstances:

- (a) **Layoff of classified employee.** One or more classified employees will be laid off or demoted as a result of the contract for personal services.
- (b) **Contract amount.** The disbursements for personal services may exceed \$500,000 in a fiscal year or \$2,000,000 during the life of the contract.

(c) Number of Contracts *The appointing authority has or will enter into six or more separate contracts for substantially the same personal services in a fiscal year.*

7-6.7 Complaints *Any complaint regarding the use of the decentralized review and approval process by an appointing authority may be brought only under the complaint procedures in rule 7-9.*

702. Training. Each appointing authority shall nominate one or more persons to act as a certification officer. The department of civil service shall train all certification officers in the proper procedures for reviewing and approving disbursements for personal services under the decentralized procedure authorized in rule 7-6. The training shall include the following:

- (a) An overview of the constitutional, legal, and procedural requirements governing disbursements for personal services.
- (b) Interpretation of the standards for approving disbursements for personal services in rule 7-2.
- (c) Factors to assist in determining if a person is a special personal services employee or an independent contractor.
- (d) Documentation requirements.
- (e) Record maintenance requirements.
- (f) Reporting requirements.
- (g) Audit procedures.

703. Designation of Certification Officers. An appointing authority may not use the decentralized procedure until the department of civil service designates in writing that at least one certification officer has received adequate training. Thereafter, unless the designation is revoked in writing by the state personnel director, the appointing authority is authorized to certify disbursements for personal services under rule 7-6. As a condition of the use of the procedure in rule 7-6, an appointing authority agrees to comply with all civil service rules and regulations governing disbursements for personal services and consents to an audit by the department of civil service at any time.

704. Withdrawal of Certification. If the state personnel director determines that an appointing authority has misused its certified authority or a certification officer has improperly certified disbursements for personal services under the decentralized procedure, the director may revoke the designation of the appointing authority's certification officers. The director may also take any other appropriate action to ensure future compliance with civil service rules and regulations. If the director revokes the designation of the certification officers, the appointing authority is prohibited from using the decentralized procedure until certification is restored. A decision by the state personnel director revoking the designation of the certification officers is final and no appeal is authorized.

705. Procedure. A certified appointing authority may use the decentralized procedure if it complies with the following:

- (a) **Number.** The appointing authority shall assign a unique number generated by the department of civil service to each proposed contract for personal services. A renewal of, or amendment to, an approved contract shall use the same number, unless otherwise instructed by the department of civil service.
- (b) **Review and Certification.** If an appointing authority intends to execute a contract for personal services approved under the decentralized procedure in rule 7-6, a certification officer of the appointing authority shall review the proposed contract and shall certify to the department of civil service on behalf of the appointing authority compliance with rule 7-6 and these regulations.
- (c) **Form.** The certification officer shall file a prescribed form with the department of civil service at least 14 calendar days before the appointing authority executes the contract. At the same time, the appointing authority shall also post a notice of the proposed contract in a central public location as notice to nonexclusively represented employees. (The obligation of the appointing authority to give notice to an exclusive representative is governed by any applicable collective bargaining agreement.) The civil service form shall contain at least the following information:
 - (1) The nature of the personal services.
 - (2) The duration of the proposed contract.
 - (3) The total cost of the proposed contract.
 - (4) The standard or standards in rule 7-2 upon which the appointing authority relies for approval of the proposed contract.

- (5) Certification of each of the following:
- (A) That the proposed personal services meet one or more of the standards in rule 7-2.
 - (B) That the proposed contract will not result in the layoff or the demotion of any classified employee.
 - (C) That the disbursements under the proposed contract will not exceed \$500,000 in any fiscal year or \$2,000,000 over the life of the contract.
 - (D) That the appointing authority has not and will not enter into six or more contracts for substantially the same personal services for the same fiscal year.
 - (E) That no disbursements for personal services under the proposed contract will be made to any special personal services employee.
- (6) If the certification officer is unable to certify each of the above, the appointing authority shall not authorize or make any disbursements for personal services under this procedure.
- (c) **Standards and documentation.** The certification officer shall also verify in writing that the appointing authority has completed and retained sufficient detailed documentation of the proposed contract to demonstrate clearly how the proposed contract meets one or more of the standards of rule 7-2. For example, the documentation shall include as many of the following as are applicable:
- (1) The invitation to bid or request for proposal.
 - (2) Detailed evidence of equipment costs, personnel cost savings, and cost comparisons.
 - (3) Any documents demonstrating the absence of an applicant pool for classified employment.
 - (4) The contract and any amendments or cost changes.
 - (5) Any forms or other information required by the department of civil service.

706. Civil Service Approval and Notice. The department of civil service shall review the certification filed by the appointing authority and, if proper, shall approve the disbursements

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for personal services as certified. The department shall publish, at least weekly, a list of all disbursements approved by the department of civil service under rule 7-6. The appointing authority filing the certification shall not make any disbursements for personal services until the department of civil service has published its approval.

707. Further Review of Decentralized Approvals. Any person who objects to an approval made under the decentralized procedure may file a complaint with the state personnel director under rule 7-9. The director shall review the complaint and order an inquiry if there is a meritorious basis for the complaint.

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800. Preauthorized Procedure

801. Rules.

Civil Service Rule 7-7

7-7 Procedure: Preauthorization

7-7.1 Publication of List — The department of civil service may establish and publish a list of personal services deemed to meet one or more of the standards of rule 7-2 without further review.

7-7.2 Use of preauthorized approval — An appointing authority may make or authorize disbursements for any preauthorized personal services without submitting a request or obtaining prior written approval of the department of civil service.

7-7.3 Reporting — As a condition of using the preauthorized list, the appointing authority shall report all disbursements for preauthorized personal services as required by statute and civil service regulations.

7-7.4 Additions to preauthorized list — An appointing authority seeking to add personal services to the list of preauthorized personal services may file a request under the procedures in rule 7-5.

7-7.5 Complaints or Appeals — Any complaint regarding the use of the preauthorized approval process or any disbursements for personal services made or authorized under the preauthorized approval process may be brought only under the procedures authorized in rule 7-9. Any complaint regarding a technical decision to add personal services to the preauthorized list may be brought only by an interested party under the technical appeal procedures in rule 8-3.

802. Conditions. The department of civil service may impose reasonable conditions and requirements on the use of preauthorized services to ensure compliance with civil service commission rules. The department of civil service may restrict the use of particular preauthorized services to specific appointing authorities or may preauthorize services on a statewide basis.

803. No Other Approvals Required. An appointing authority may enter into a contract for personal services on the preauthorized list without obtaining any other approval from the department of civil service. Civil service staff approval on form CS-138 is *not* required. Also, the appointing authority is not required to use the decentralized approval procedure under rule 7-6. If a service is preauthorized with conditions, it is the responsibility of the appointing authority to ensure that the conditions have been complied with in every particular before authorizing or making disbursements for the personal services.

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804. Inquiry and Limitations. The department of civil service expressly reserves the right to require an individual review of services provided under a contract for preauthorized services when there is a question as to the applicability and validity of the use of the preauthorized list. The department may require an appointing authority to justify its use of the preauthorized personal services list in a specific instance. The department may issue an order in writing to an appointing authority modifying, restricting or revoking the future use of the preauthorized list if the department determines that the appointing authority has improperly used the preauthorized services list.

805. Alteration of List. The department of civil service may add to, remove, or modify the preauthorized personal services list at any time and shall give written notice of any additions, deletions, or modifications to each affected appointing authority. The decision of the department of civil service is final and no appeal is authorized.

806. Effect of Deletion from List. Deletion of specific personal services from the preauthorized list shall not affect any existing contract properly entered into by an appointing authority before the deletion. However, an appointing authority may not renew or extend a contract for services deleted from the preauthorized list without first obtaining approval under rule 7-5 or 7-6.

807. Review of Preauthorized Disbursements. Any person who objects to a preauthorized personal services contract may file a complaint with the state personnel director under rule 7-9. The director shall review the complaint and order an inquiry if there is a meritorious basis to the complaint. In addition to any other action permitted under rule 7-9, if the director determines that the preauthorized personal services do not meet the standards for preauthorization, the director may order that the list of preauthorized personal services be amended appropriately.

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900. EMERGENCY DISBURSEMENTS

901. Rules.

Civil Service Rule 7-8

7-8 Emergency Disbursements — An appointing authority may authorize or make disbursements for personal services by persons who are not classified employees without prior approval when an emergency occurs. The services must not continue beyond 14 calendar days without approval of the department of civil service. The department may approve continuation of emergency services for an additional period not to exceed 28 calendar days.

[No Regulations]

1000. COMPLAINTS AND INVESTIGATIONS

1001. Rules.

Civil Service Rule 7-9

7-9 Complaints and Investigations

7-9.1 Investigation by state personnel director — Any person may file a written complaint with the state personnel director that a contract for personal services has been awarded by an appointing authority in violation of article 11, section 5, of the constitution or a civil service rule or regulation. The complainant shall also serve a copy of the complaint on the appointing authority and the office of the state employer. If the state personnel director determines that there is a meritorious basis for the complaint, the director shall appoint a person to conduct an inquiry and make a recommendation to the director.

7-9.2 Violations — If the state personnel director finds any of the following circumstances, the director may disapprove disbursements for personal services or take other appropriate action to ensure compliance with the constitution and the rules and regulations:

- (a) The appointing authority has entered into a contract for personal services without obtaining required civil service approval.
- (b) The appointing authority obtained civil service approval by fraud, material misrepresentation, or failure to disclose material facts.
- (c) The appointing authority made or authorized improper disbursements for personal services under the decentralized review and approval procedure or the list of preauthorized personal services.
- (d) The appointing authority failed or neglected to report a contract or disbursements as required by law, civil service rule, or civil service regulations.
- (e) The appointing authority failed to create or maintain adequate records to properly document its compliance with these rules and the regulations.

7-9.3 Appeal of director's determination — A determination of the state personnel director under this rule shall be final unless the appointing authority files an application for leave to appeal to the employment relations board within 14 calendar days after the date of mailing of the director's determination. Thereafter, the appeal procedures of the employment relations board control.

1102. Filing Complaint. Any person may file a complaint that an appointing authority has awarded a contract for personal services in violation of article 11, §5, of the Michigan constitution or a civil service rule or regulation. The complaint shall be filed in writing with the state personnel director. A copy of the complaint shall be filed simultaneously with the appointing authority that awarded the contract and the office of the state employer.

1103. Time Limitations for Filing Complaints. A complainant shall file a complaint on or before the earliest of the following dates:

- (a) **General Time Limits.** A complainant shall file a complaint no later than 28 calendar days after the complainant became aware of the violation or, in the exercise of reasonable diligence, should have become aware of the violation.
- (b) **Specific Time Limits under Decentralized Procedure.** Under section 706, above, the department of civil service is required to publish a notice of all disbursements for personal services approved under the decentralized procedure in rule 7-6. The following types of complaints shall be filed no later than 28 calendar days after the date of publication of the civil service notice:
 - (1) A complaint that a contract certified by an appointing authority under the decentralized procedure in rule 7-6 does not meet one or more of the standards in rule 7-2.
 - (2) A complaint that the appointing authority has not documented its compliance under rule 7-6.3 and these regulations sufficiently to permit the appointing authority to determine if the contract meets any of the standards in rule 7-2.

1104. Complaint. The complaint shall contain, at a minimum, the following:

- (a) The name or identity of the person or organization filing the complaint.
- (b) The address, telephone number, and a fax number (if any) of the complainant or the complainant's representative.
- (c) Details of the specific contract that is the subject of the complaint, sufficient to identify (1) the parties to the contract and (2) the specific personal services provided under the contract.
- (d) A succinct statement of the complaint, setting forth with particularity, each of the following:
 - (1) The particular provision of the Michigan constitution or civil service rules or regulations that is alleged to have been violated.
 - (2) The facts that the complainant believes support the complaint.

- (e) Proof of service that a copy of the complaint has been simultaneously served on the appointing authority responsible for the contract and the office of the state employer.

1105. Interim Stay of Contract. The complaint may include a request that the state personnel director issue an interim order to stay the award of the contract. A request for an interim order must include:

- (a) A sworn statement alleging that immediate and irreparable injury, loss, or damage will result to the complainant if the interim order requested is not granted.
- (b) Specific facts supporting the allegation of immediate and irreparable injury, loss, or damage.

1106. Preliminary Review. All complaints shall receive preliminary review. The state personnel director may dismiss the complaint for lack of meritorious basis if any of the following are found:

- (a) The complaint fails to properly allege a violation within the jurisdiction of the commission.
- (b) The complaint fails to set forth allegations with sufficient particularity to permit review.
- (c) The facts alleged do not constitute a violation.
- (d) The complaint alleges matters that were reviewed or adjudicated in a previous civil service proceeding, irrespective of whether or not the complainant was a party to the previous proceeding.
- (e) The complaint is untimely.
- (f) The contract was approved by the department of civil service under rule 7-1 and the complaint was, or could have been, raised in a technical appeal under rule 8-3.
- (g) The complaint fails for other good and sufficient reason to warrant further review.

1107. Investigation. If the state personnel director determines that there is a meritorious basis to review the complaint, staff will conduct a review of the allegations in the complaint. The complainant and the appointing authority that awarded the contract shall cooperate in the investigation. Failure to cooperate may result in dismissal of the complaint, disapproval of the contract, or other appropriate sanctions as deemed appropriate by the state personnel director.

1108. Staff Recommendation. Civil service staff shall submit a written recommended finding to the state personnel director at the conclusion of the investigation. If one or more circumstances in rule 7-9.2 exists, the finding shall include recommended actions and sanctions. A staff recommendation will be issued within two months after the complaint is filed unless circumstances require additional time.

1109. Decision by Director. After receiving the staff recommendation, the state personnel director shall issue a written determination regarding the complaint. If the director finds one or more of the circumstances set forth in rule 7-9.2, the director may disapprove further disbursements or take other appropriate action. If the director does not find any such circumstances, the director shall dismiss the complaint.

1110. Appeal of Director's Decision. If the state personnel director issues a determination finding a violation, the determination is final unless the appointing authority files an application for leave to appeal to the employment relations board within 14 calendar days after the date of mailing of the state personnel director's determination. If the state personnel director issues a decision dismissing the complaint, the decision is final and no appeal of the dismissal is authorized.

1111. Complaint and Investigation Procedures.

<u>Responsibility</u>	<u>Action</u>
Complainant:	<ol style="list-style-type: none">1. Prepares and submits a complaint to the State Personnel Director.2. Provides copy of the complaint to the appointing authority and Office of the State Employer and a proof of service to the State Personnel Director.
State Personnel Director:	<ol style="list-style-type: none">3. Upon receipt of the complaint, conducts preliminary review and determines if there is a meritorious basis for further investigation.4. If no basis for further investigation exists, dismisses the complaint.

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<u>Responsibility (cont.)</u>	<u>Action (cont.)</u>
Civil Service Staff:	<p>7. Conducts investigation into allegations specified in the Complaint.</p> <p>8. Determines if request for interim order of the State Personnel Director is warranted. Drafts recommended ruling of the State Personnel Director.</p>
State Personnel Director:	9. Reviews, signs, and issues ruling regarding request for interim order.
Appointing Authority:	10. If aggrieved by determination, applies for leave to appeal to the Employment Relations Board (optional).

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1200. AUDIT AND ENFORCEMENT

1201. Rules.

Civil Service Rule 7-10

7-10 Audit and Enforcement — The department of civil service shall periodically audit an appointing authority to ensure that the appointing authority is complying with civil service rules and regulations governing disbursements for personal services. If the state personnel director determines that an appointing authority has not substantially complied with the rules and regulations, the state personnel director is authorized (1) to require the appointing authority to file a written request and to obtain prior written approval from the department of civil service for all disbursements for personal services and (2) to take such other action as will reasonably ensure that the appointing authority complies with the rules and regulations in the future.

[No Regulations]

1300. CONTRACT REQUIREMENTS

1301. Rules.

Civil Service Rule 7-11

7-11 Contract Requirements — Every contract for personal services must contain a provision that the state is obligated to comply with article 11, section 5, of the constitution and applicable civil service rules and regulations. The provision must also give notice that, notwithstanding any other provision of the contract to the contrary, the state personnel director is authorized to disapprove contractual disbursements for personal services if the state personnel director determines that the contract violates article 11, section 5, of the constitution or applicable rules and regulations. The failure of an appointing authority to require such a provision in a contract for personal services does not limit or restrict the authority of the civil service commission and the state personnel director to disapprove disbursements for personal services.

[No Regulations]

1400. LIMITATIONS

1401. Rules.

Civil Service Rule 7-12

7-12 Limitations

(a) Civil service does not approve contracts. *Nothing in these rules relieves an appointing authority of obligations under any other law, rule, or regulation that may apply to a contract for personal services. Approval of a request by the department of civil service under this rule does not, itself, constitute approval of any contract or any agreement by the state of Michigan to be bound by the terms of any contract.*

(b) Limitation on aggregate disbursements. *Approval of a request by the department of civil service required by these rules only authorizes the appointing authority to make disbursements for personal services to persons outside the classified service for the proposed period of disbursements. The appointing authority shall not make aggregate total disbursements for personal services over the proposed period of disbursements that exceed the total amount approved by the department of civil service without the further approval of the department.*

1401. Requirement to Report Contracts. The legislature, in 1984 PA 431, MCLA §18.1281, requires the department of civil service to file various reports related to contracts for personal services. Since the department of civil service only authorizes disbursements and does not review contracts, appointing authorities must report contract information to the department of civil service for transmittal to the legislature. Also, the department of civil service requires, as a condition of the use of the preauthorized-services list and the decentralized procedure, that an appointing authority report all contracts initiated or renewed under these procedures during a reporting period. For preauthorized services, the preauthorized-services list establishes the reporting period and any additional reporting requirements. If an appointing authority fails to report a personal services contract, the state personnel director may make a finding and take action against the appointing authority, as permitted in rule 7-9.
